IN THE

Supreme Court of the United States

October Term, 1963

No. 244

JOHN FRANK BUTLER,

Appellant,

vs.

WALTER DUNBAR, Director of Corrections of the State of California,

Appellee.

On Appeal From the Supreme Court of the State of California.

REPLY TO MOTION TO DISMISS.

1. Appellant's position is not inconsistent with the holding in *Robinson v. California,* 370 U. S. 660. That case held in essence that persons who have lost the power of self control as to narcotic use are *not criminally accountable* for their condition. They must be treated as sick persons. Appellant's position is that the converse is also true. Persons who *are criminally accountable* must be given the safeguards of a criminal proceeding before they are confined for treatment or otherwise. The statute does not require and no court has found that appellant has lost the power of self control. Yet he is confined without benefit of the safeguards of a criminal proceeding.

2. *De La O* began his journey to confinement by being convicted of a criminal charge. (*In re De La O*, 59 A. C. 140, 145, 28 Cal. Rptr. 489.) The narrow question presented in his case was whether the identity of his offense and the type of confinement imposed were such as to bring him within the prohibition of *Robinson*. The case at bar, by contrast, presents the broader questions whether the same confinement, or any confinement, may be imposed *without* benefit of the safeguards of criminal proceedings upon persons *not* shown to be sick within the meaning of *Robinson*.

3. Appellee admits that the definition of the class of persons subject to commitment is so broad that a district attorney who enforced it to the limit of its terms would thereby make a fool of himself. (M. D. 4.) He thereby also admits that the determination as to who shall be exempted from the rigor of the law on medical grounds is vested in the district attorney. Surely a statute which produces such results merits the scrutiny of a plenary hearing on appeal.

4. Appellee construes the language of the California court in *In re De La O*, 59 A. C. 140, at pages 153-155, 28 Cal. Rptr. at pages 497-498, as saying only that habeas corpus is available to compel parole. We do not so interpret the language. However, if that is what the court meant, it left unanswered one very large question. By what constitutional authority may a person who has not been convicted of a crime and who has been pronounced, "cured," of his illness by a court in a habeas corpus proceeding be required to spend three years on parole?

5. Since the filing of appellee's motion to dismiss, appellant has been transferred from the California Re-

habilitation Center at Chino, California, to the Reception and Guidance Center, also at Chino. This is the facility to which most felony convicts from Southern California are initially sent. Appellant has advised his counsel that after a period of, "segregation," he is to be confined in a cell with felons. On these facts he falls squarely within the holding of the Supreme Court of Michigan in *In re Maddox,* 351 Mich. 358, 88 N. W. 2d 470, that such confinement on a civil commitment denies due process.

Respectfully submitted,

J. PERRY LANGFORD,
Attorney for Appellant.